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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,590	03/24/2004	Mark Girard	10123/04201	3798

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FAY KAPLUN & MARCIN, LLP
150 BROADWAY, SUITE 702
NEW YORK, NY 10038

EXAMINER

DESANTO, MATTHEW F

ART UNIT	PAPER NUMBER
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3763

MAIL DATE	DELIVERY MODE
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05/16/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/807,590

Applicant(s)

GIRARD ET AL.

Examiner

Matthew F. DeSanto

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10, 13-16 and 18-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 13-16 and 18-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-10, 13-16, 18-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cupp et al. (USPN 4,892,518), and further in view of Ensminger et al. (USPN 5,542,923).

Cupp et al. discloses an F-shaped connector for a dual well port, comprising: a trunk including first and second connector lumens extending therethrough, distal ends of each of the first and second connector lumens being connectable to proximal ends of separate catheter lumens; a first arm of the trunk extending from the trunk at an angle relative thereto and including an arm portion of the first connector lumen, a proximal end of the arm portion of the first connector lumen being fluidly connectable to a first well of the dual well port; and a second arm of the trunk extending from the trunk at an angle relative thereto and including an arm portion of the second connector lumen, a proximal end of the arm portion of the second connector lumen being fluidly connectable to a second well of the dual well port, wherein the first and second connector lumens are separate from one another so that fluid from the first well does not mix with fluid from the second well before reaching the distal ends of the first and second connector lumens

Art Unit: 3763

(see figures 2, 7, 11A and entire reference), but fails to teach the first arm separated from the housing by a gap.

Ensminger et al. discloses an F-shaped connector for a dual well port, comprising: a trunk including first and second connector lumens extending therethrough, distal ends of each of the first and second connector lumens being connectable to proximal ends of separate catheter lumens; a first arm of the trunk extending from the trunk at an angle relative thereto and including an arm portion of the first connector lumen, a proximal end of the arm portion of the first connector lumen being fluidly connectable to a first well of the dual well port; and a second arm of the trunk extending from the trunk at an angle relative thereto and including an arm portion of the second connector lumen, a proximal end of the arm portion of the second connector lumen being fluidly connectable to a second well of the dual well port, wherein the first and second connector lumens are separate from one another so that fluid from the first well does not mix with fluid from the first well before reaching the distal ends of the first and second connector lumens (see figure 4 and entire reference) and teaches a gap (the space between the first and second arm [92, 92']).

Therefore at the time of the invention it would have been obvious for one of ordinary skill in the art to combine the device of Cupp et al. with the teachings of Ensminger et al., since the limitations not taught in Cupp et al. is an obvious matter of design choice to one skilled in the art. Applicant fails to disclose any criticality and/or unexpected results and even teaches that one of ordinary skill would understand how to modify the device depending on the medical situation (applicant's specification

paragraph 0012). Further more, it appears that the invention would perform equally well with any spacing between the first and second arm, whether it be an opening or just a space between the first and second arm, as taught by Cupp et al. (in reference number 161) or the gap between the housing as taught and shown in figure 4 of Ensminger for the reasoning that the space still serves the same function, which is to maintain separate lumens to prevent the medicaments from mixing. Hence forming a space between the housing and the arms are a mere obvious modification that would require routine skill in the art.

3. Claims 1-10, 13-16, 18-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ensminger et al. (USPN 5,542,923).

Ensminger et al. discloses an F-shaped connector for a dual well port, comprising: a trunk including first and second connector lumens extending therethrough, distal ends of each of the first and second connector lumens being connectable to proximal ends of separate catheter lumens; a first arm of the trunk extending from the trunk at an angle relative thereto and including an arm portion of the first connector lumen, a proximal end of the arm portion of the first connector lumen being fluidly connectable to a first well of the dual well port; and a second arm of the trunk extending from the trunk at an angle relative thereto and including an arm portion of the second connector lumen, a proximal end of the arm portion of the second connector lumen being fluidly connectable to a second well of the dual well port, wherein the first and second connector lumens are separate from one another so that fluid from the first well does not mix with fluid from the first well before reaching the

Art Unit: 3763

distal ends of the first and second connector lumens (see figure 4 and entire reference) and teaches a gap (the space between the first and second arm [92, 92']), but fails to teach the specific angles of the first and second arms.

At the time of the invention it would have been obvious for one of ordinary skill in the art to modify the device of Ensminger et al., since the limitations not taught in Ensminger et al. is an obvious matter of design choice to one skilled in the art.

Applicant fails to disclose any criticality and/or unexpected results and even teaches that one of ordinary skill would understand how to modify the device depending on the medical situation (applicant's specification paragraph 0016). Further more, it appears that the invention would perform equally well with any angle between the first and second arm and the tubing connected to the first and second arm, the reasoning that the angle of the arms and tubing doesn't change the overall concept of the invention, which is to provide a compact delivery device that allow separate medicament to be injected into the body, wherein the separate medicament is prevented from mixing together. Therefore, the modifications to the first and second arms would be an obvious one and would only take routine skill in the art to fulfill the requirements of the claims.

Response to Arguments

4. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

5. The previous rejections (Cupp et al. USPN 4,892,518; Tallarida et al. USPN 6,962,577; Ensminger et al. USPN 5,542,923) have been withdrawn.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew F. DeSanto whose telephone number is 571-272-4957. The examiner can normally be reached on Monday-Friday 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick LUCCHESI can be reached on (571) 272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Matthew DeSanto
Art Unit 3763
May 13, 2007